United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1122

H.G. SKIDMORE
95-18 BALDWIN AVE
FOREST HILLS NY
11375

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

H. G. SKIDMORE,	
Petitioner-Appellant	
vs	74 - 1122
National Railroad Adjustment Board Thrid Division	
Appellee	

APPELLANT'S BRIEF

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF NEW YORK.

The petitioner-appellant, H. G. Skidmore, acting pro se, presents this brief in conjunction with his Notice of Appeal, filed on the 28th day of December 1973, of the judgment as issued in the Memorandum and Order, dated November 7, 1973, by the Honorable Jack B. Weinstein a judge of the United States District Court for the Eastern District of New York.

A review of the Awards 19554 and 19454 issued by Mr. E. A. Killeen, Executive Secretary, of the National Railroad Adjustment Board Third Division was sought without abbreviation in its entirety not only because of the final decision of the lower court which included the statement,

> "This court lacks authority to grant relief. The orders of the Division of the Adjustment Board are affirmed. The petition is dismissed.",

and venue now

lies within the jurisdiction of the United States Court of Appeals in accord with Section 153 (q) of the Railway Labor Act and Section 1291 of United States Code but, additionally I believe, due to the fact this court has jurisdiction to protect the railway employe in matters involving the interpretation of Congressional Acts, issues governed by protective clauses made pursuant to Section 5 (2)(f) of the Interstate Commerce Act, Public Law 91-518.

Copies of the docket entries for files 73 C 717 and 73 C 901 and the final decision of the District Court are herewith submitted with the Appendix and marked "A", "B" and "C".

The relief prayed for is that Judge Weinstein's Memorandum and Order will be set aside or enjoined. That Awards 19554 and 19454 of the National Railroad Adjustment Board Third Division will be rescinded and the full rights, rules, privileges and fringe benefits of my employment will be restored in full even into retirement.

With respect to Award 19554 the requested restoration should include permission to choose my full vacation in in accord with my seniority from the available times. The vacation periods, not necessarily consecutive, may be taken in conjunction with my days of rest or at the direction of my supervisoring officer whichever I prefer. That I will be reimbursed or allowed two (2) days for each year from August of 1969 until a full correction is made in the vacation

procedures to those that prevailed prior to my involuntary transfer from Grand Central Terminal.

Point I

Judge Weinstein's reference to the oral argument at the hearing on October 2, 1973 appears to be out of context to the issues that were before the National Railroad Adjustment Board. It matters not that the Union showed little interest in defending these grievances for the vacation issue Award 19554 MS 19476 file 73 C 717 was a local agreement on the property at Pennsylvania Station made some years before this employee was transferred from Grand Central Station. The labor representative at the Penn Station had agreed to these rules that were different than those that had applied to my employment and therefore his attitude was prejudicial to my best interests and therefore unable to protect them.

The grievance on passes Award No. 19454 Ms 19575 file 73 C 901 was not a negotiated rule or agreement and thereforenot not defensible by the union. They were and are defendable by the aggrieved employe and I consider it more than a technicality when I infer it would be closer to the point to indicate new pass policies had been formulated and the pass privileges were substantially reduced. Those changes put the Penn Central employes in a worse position under the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads which was given in order to comply wit h the requirements of Section 5(2)(f) of the Interstate Commerce

Act. It also violated the protective legislation incorporated in Public Law 91-518 enacted by the Congress of the United States of America,(see sections 401(a) and 405 (a),(b) and (c) and in accord with Section 307 action was taken in an attempt to relieve the threat of such loss. Also Sections 306 and 404.

Point II

Nowhere in the grievance on the property, nowhere in my submissions will the claim be found that a (the) Vacation Agreement has been violated.

Point III

Judge Weinstein's introductions and remarks relative to the Union's jurisdiction of the grievances should be ignored for they introduce a prejudicial atmosphere and tend to jeopardize appellant's position. The acceptance of the labor organization's refusal to defend the vacation issue and their denial of formal protection on the pass rights and privileges as sufficient reason not to set aside these decisions of the Adjustment Board would violate my constitutional right to equal protection of the laws (No. 73-949 McIlvane v. Pennsylvania)

In the first place the employe's goal has not been negotiation. It has been solely for protection of rights, rules, and etc. of his employment other than those covered by agreements negotiated between the Carrier and Labor Organization.

It is a fact that a majority of the employes transferred

from Grand Central Terminal signed the petition to the union representative, Mr. James Hawkins, for protection of the vacation privileges and rules we had had. A review of that case file 73 C 717 will indicate that a union representative had made an attempt to correct the inequities without a notice to myself or any of my co-workers. He did not, however, pursue the matter.

A review of the pass issue the regulations, of which, were governed by a particular set of rules will indicate a majori ty of the employes in just one office petitioned for a hearing to the Carrier's Representative and an equal number signed a petition to the National Railroad Adjustment Board because it was thought they were protected.

The failure to act in defense of the employe's rights an d privileges by the unions should not hinder or impede the rights of the individual to protect by or thru any legal channels at their command, especially in view of many previous cases wherein the precedent has been set that if the employe fails to protect his interests thru timely or proper procedure whether he or his representative is handling he has no recourse if the grievance is lost on a technicality.

See Commerce Clearing House Vol.#68 Case No. 12583

" " " " " " " 12675

" " " " #67 " " 12429

U.S.C.A. Section 153 First(j); cf. Pacilio v. Pennsylvania R.R. Co., 381 F. 2d 570,572(2d Cir.1967).

Point IV

Judge Weinstein erred when implying the Awards should no t be overturned due to the financial conditions of the Penn Central and complex arrangements involved in Amtrak's takeover for a review of Award 19454 will indicate the employe suggested withholding of the restrictive measures until such time as the grievance had been finally settled. With regard to Amtrak's operations, suffice it to say, the complexities will be no greater than Amtrak decides to make them except for the fact, they have failed to comply with the legislation for protection of the railway employes that was incorporated in the Act of Congress that created them.

> "It is a well settled rule of law that a party must fulfill his contractual obligations. Fraud, or mutual mistake, or the fraud of one party and the mistake of the other, or an inadvertance induced by the one party and not negligence on the part of the other, may relieve from an expressed agreement, and an act of God or the law or the interfering or preventive act of the other party may free one from the performance of it; but if what is agreed to be done is possible and lawful the obligation of performance must be met. Difficulty or improbability of accomplishing the stipulated undertaking will not avail the obligor.
>
> The courts will not consider the hardship or the expense or the loss to the one party or the meagreness or the uselessness of the result to the other. They will neither make nor modify contracts nor dispense with their performance. When a party by his own contract creates a duty or charge upon himself he is bound to a possible performance of it, because he promised it, and did not shield himself by proper conditions or qualifications."

"It is urged that, by reason of changes in the expense of living and the conditions of employment, the terms have become onerous, and the expense of production makes the business unprofitable to the manufacturer. This excuse for the non-performance of contract has been frequently presented to the courts but has never been accepted. Unless the parties have stipulated, in terms, for relief because of changed conditions, they must perform their contract as it is written."

Point V

It is difficult to reconcile certain docket entries in the record of proceedings before the District Court. They are listed as items "A" and "B" of the Appendix. Their acceptance alters certain beliefs appellant held during the processing of files 73 C 717 and 73 C 901.

There is an order listed on item "B", dated August 6, 1973 issued by Judge Jack B. Weinstein for a pre-trial conference on October 2, 1973. It also applies to file 73 C 717. (8- 7 - 73 item # 2).

Notice of another order dated 9-1-73 implying that a pre-trial conference was filed on document # 5. The only record found by appellant in the lower courts papers is a notation on item # 5 -"The clerk of the court will send a a copy of the paper to Mr. Carvatta. So ordered, September 1, 1973 Jack B. Weinstein."

Still another entry is found, this time on item "A" the record of file 73 C 717. It is dated 9-13-73 "before Weinstein, J. case called on deft's motion for leave to intervene as defts,etc. Adjd to 10-2-73 at 9:30 am."

On pages 1, 2, and 3 of item "F" of the appendix the letters from Mr. Robert M. Peet, General Attorney of the Penn Central Transportation Company suggest the case had not been called, only postponed.

Point VI

Despite the fact that Judge Weinstein granted leave for the Intervener's Attorney to intervene during the hearing I believe he erred in view of U S C A 45 - 153 First (q) and Case # 13,049 Commerce Clearing House Vol. # 69 - 1972 Cesar Mendes, Petitioner v. R.E.A. Express, Inc. Respondent. 72 Civ. 519 and 72 Civ. 2034 September 12, 1972. It is also my belief that this order was later rescinded until such time as the Petitioner answered the Trustee's reply memorandum and the decision was reserved. There is no reference found, however, in the Memorandum and Order as delivered.

Point VII

It was unfortunate that the Order of the District Court dated August 6, 1973 and forwarded to Mr. E. A. Killeen, Executive Secretary, of the NRAB was inadvertently issued in the name of L. Skidmore Appendix item "B" item # 2. It contained together with other instructions the charge:

> "Failure to appear or communicate with the court prior to the time set will be deemed a default."

Mr. Carvatta, the Administrative Officer of the Board, was apparently notified as per instructions on docket entry # 5

of File 73 C 901. Despite the wording of Section 153 First (q) of the Railway Labor Act the Courts (Lower) order was neither changed or modified to my knowledge. It is a fact there was no representation present, in person or by timely communication, from the National Railroad Adjustment Board Third Division, the only legal defendant in this case on the 2nd day of October, 1973 at 9:30 in the A.M., in compliance with that specific order. Therefore Judge Weinstein apparently erred by not entering a ruling by default against the defendant with respect to the matters contained in Files 73 C 717 and 73 C 901 for defiance of the courts is not to be condoned.

Point VIII

It is significant to note that each of these grievances required the services of a referee before a decision could be reached for the initial vote of the Division's members resulted in a deadlock. The Third Division by legislation U.S.C.A. 45 - 153 First(h) consists of five members appointed by the carriers and five by the labor organizations and because of this make up of the Board these Awards must be attached on the basis the tribunal is neither unbiased or unprejudiced in these Orders, otherwise there would have been a clear, yes or no.

Point IX

Prior decisions of the Adjustment Board have been quite restrictive when applied to the performance of the employe or his representative during the processing of a grievance with

with the Carrier. Appropiate to the issue, the negotiated rules prescribe certain steps as well as time limits to be followed by the employe or his representative as well as the Carrier's. Neither the Rules Agreement or the Railway Labor Act in 153 First(i) restrict the adherence to the employe alone.

Each of these grievances are governed by Rules 7-A-1 and and 6-A-1(d) of the Manual for they are grievances other than covered by a negotiated rule. (item "D" of the Appendix)

Each grievance was lost by the Carrier's representative during its initial processing, for the Carrier's Representative violated the rules of the Agreement and the Railway Labor Act. Therefore, even if it had been a requirement no labor representative was necessary in any further step of the processing.

Mr. E. J. Gaynor failed to give a written reply,(formal) to my vacation grievance.

Mr. E. J. Gaynor would not permit a grievance, to the petition for a hearing,received from over two thirds of the force in his office,for protection of the pass rights and privileges, for he claimed the passes did not come under the terms of the labor contract.

The violation was compounded with respect to Award 19554 by Mr. Patterson when he failed to render a timely decision within 15 calendar days of receipt of appeal and by Mr. Shuron with respect to Award 19454 when he ignored the employe's appeal for a hearing and would not permit a grievance because he

did not consider it came under a specific rule, 6-A-1, 7-A-1, 7-B-1, or 9-A-2.

There was another violation when Mr. Patterson responded to my appeal for a hearing on the passes for he did not consider it a proper subject for handling under the Rules Agreement or proper basis for an unjust treatment hearing. These discrepancies are well documented in the processing on the property and before the Adjustment Board in the submissions.

The Adjustment Board has ignored this part of the handling of the grievance in their "Opinion of Board". It is a biased and prejudicial act by the Third Division to the employe and, in view of prior decisions, by the courts that have ruled against the employer when it has not granted a hearing, and the Adjustment Board when it has dismissed the employe's grievance because he did not adhere to time limits or process in the proper manner, it should be set aside. Denied due process.

(Commerce Clearing House Vol. # 61 -1969-1970 Case No. 10,588 B.J.Diamond, Plaintiff v. Terminal Railway Alabama State Docks Defendants-United States Court of Appeals Fifth Circuit No. 27588 -January 9,1970 on appeal from United States District Court Southern District of Alabama.)

Also court exhibit # 3 item listed on page 2 of docket entry # 13 Appendix "A" item-Award No. 19553

First Division Awards - 17836,18254,20792,20793,20794

If there is a collective bargaining agreement with management for union representative to handle grievances and if accredited union bargaining representative fails to properly process, employee must personally press his grievance.

Point X

Let us look once again at the "Opinion of Board" in those Awards. In No. 19554 one can find no reference in paragraph 2 to that part of the grievance as presented to the Adjustment Board, by the employe, as it relates to the Carrier's violations. One does find that the "Opinion" has been tailored to fit the need of the moment. If it is not considered an attempt to defraud the employe of a favorable ruling it must be considered arbitrary and capricious for there is no basis in the petitioner's presentations for an opinion of this nature.

In Award 19454 under the same heading,

> "1. The issue of just compensation for any loss or hardship is dismissed as no claim covering this matter progressed on the property.".

Here the Adjustment Board has ignored the main part of the claim. One might say it was unfortunate to have inserted the words, "just compensation for any loss or hardship", however, had they not been included and a favorable decision had been delivered there would be no opportunity for reimbursement. Notwithstanding the foregoing it does not excuse, or alter the THE ADJUSTMENT BOARD'S DUTY to have included an answer that will correctly rule on the Carrier's actions which formed the main theme of the complaint. An impartial review of this grievance in its entirety will indicate the claim for compensation was contingent on the acts of the Carrier and Amtrak and was for protection based on Section 5(2)(f) of the Interstate Commerce Act.

The Board's act of ignoring the Carrier's transgressions must be considered. It was apparently an attempt to word the "Opinion so that it would appear acceptable in the eyes of the court in the event it was reviewed. It is, I am afraid, more than a mistake. I would label it arbitrary and capricious and an apparent attempt to defraud the petitioner of the right of due process. The Carrier could have been found guilty, as they are, of abrogating the Agreement, instead the employe is placed in a still worse position.

Additional Points to be considered and reviewed;

Point XI

The National Railroad Passenger Corporation was given the opportunity to participate in this grievance. They have it would seem acted as though they are above the law for they did not participate. They did not defend their actions before the Adjustment Board. They are,however, in default and a judgment should be placed against them.

Point XII

Nowhere in the Order of the Third Division of the National Railroad Adjustment Board is there any mention advising that the National Railroad Passenger Corporation has been notified or furnished a copy of the Award No 19454 as a respective party to the controversy in accord with Section 155 First (m).

Point XIII

There were over two hundred signatories to the petition forwarded to the Adjustment Board. No one other than myself

has received a notice of the hearing before the Board. In view of requirements that all parties should be notified of the hearing it is questionable whether the notice to H. G. Skidmore, only, is legally considered sufficient. If it is not then the Order of the Third Division should be set aside.153/(j) First

Point XIV

In accord with Section 152 First and Second of the Railway Labor Act it is the Carrier's duty to make a reasonable effort to settle all disputes. No attempt was made on the Carrier's part to petitioner's knowledge. In File 73 C 717 Award No 10554 the Adjustment Board has deferred to an Arbitration Committee to which the employe does not have access for the Labor Organization refused to protect the employe's interests due to prior agreements of local nature. The Carrier suggested during the processing on the property that this grievance should be handled in accord with rule 7-B-1. This information is found on page 19 of the record before the Board. It is my contention that there is nothing to stop the Carrier from making an attempt,for if the labor representative does not go to the Carrier, the Carrier can go to the Labor Representative for Rule 7-B-1 is permissive and does not designate that the Labo r Representative must go to the Carrier. This was not however a claim for compensation and anyhow in compliance with paragraph (c) the denial was not in writing. The members of the Adjustment Board have failed to protect the railway employe. One of

*for which they were created. * reasons

Point XV

It should be noted that the initial charge to the Adjustment Board is virtually the same in both grievances, Files 73 C 717 and 73 C 901. The rules and practices for adjustment, handling have been complied with. The same procedure was followed in each grievance. However, in Award 19554 the ruling on the violation of the Pre-Merger Agreement is referred to the necessity of an Arbitration Committee, while in Award No. 19454 the "Opinion of Board" implys - not properly before this Board.

In Award No 19926 - "Opinion of Board" (Award - does not have jurisdiction claim dismissed.

> "Claimant alleged violations of various Federal Statutes as well as a violation of the Merger Protective Agreement in hus Claim. This Board is not impowered to interpret or enforce Federal Laws; its jurisdiction is limited to disputes coming under the Railway Labor Act. Under the Merger Protective Agreement, in Section 1(e) disputes involving the interpretation of that Agreement are to be handled by a special Arbitration Committee. This Board has ruled in a number of Awards that it will not inject itself into such disputes which are specifically reserved to the Arbitration Committee." (see for example Awards 19554, 17589 and 17594).

If the above statement is a fact then the Third Division has surely overstepped their bounds in Award 19454. It is as will be found in a review of both of the above cases the protection sought by the employe under the Agreement for Protection, etc. will be found in Section 1 (a) and (b) and because there is no definitive procedure for an individual his

protection is therefore derived through the application of Rule 9-A-2 and 7-A-1 for there is no conflict.

Again in Award No 19950 - with reference to alleged violations of The Merger Protective Agreement and the Railway Labor Act - lack of jurisdiction-and that this Board has ruled in prior awards that it will not inject itself into such disputes.

It is apparent the Adjustment Board has exceeded its authority in these cases to be reviewed. The Award must be set aside in each case for a rightful privilege and benefit has been withheld from the employe.

Point XVI

During the pre-trial hearing on the 2nd day of October, 1973 Judge Weinstein accepted certain items listed as Court Exhibits 1, 2 and 3.

Exhibit 1 - A Rules Manual dated September 1, 1949 some of the rules therein were in effect on the 20th day of May 1964.

Exhibit 2 - A Memorandum of A greement dated October 6, 1954. Some of the rules listed in this booklet supersede these of Exhibit 1 and were in effect on the 20th day of May 1964. In view of the Supreme Courts ruling, re. Norfolk & Western Railroad v. (I believe) Nimitz, Rule 46 pages 8, 9, 10 and 11 the particular parts of which permit an employe to process a claim for compensation or reimbursement are still applicable. Therefore the petitioner was before the National Railroad

Adjustment Board Third Division in proper processing of the grievance covered in Award 19454. The carrier's directive in Award 19554 that rule 7-B-1 was out of order because of its restrictions that deprive the employe of due process and it was violative of Section 152 Third of the Railway Labor Act.

Exhibit 3 - National Railroad Adjustment Boraa Third Division Award 19553.

Permission was also granted to submit any and all papers that I considered relevant or purported to show that the Union Organization would not process the grievances. The plaintiff considered it relevant to include a current Agreement Rules Manual also and mention will be found of the above items in Petitioner's Reply To Amend Original Petition and Request For Certain Corrections and Inclusions of Various Papers, that were presented to the lower court.

Point XVII

The appearance sheet of the National Railroad Adjustment Board for March 7, 1972 (page 82 of Award 19454) Docket No. MS 19575 indicates there was no representation from * Miscellaneous Organization.

As indicated on page 81 of the same file petitioner was notified of the hearing he was not , however, requested or given the opportunity to attend. H. G. Skidmore did not receive a formal notification of this hearing and therefore questions whether the Adjustment Board complied with the requirements of the Railway Labor Act in this respect.

Point XVIII

On November 14th, 1973 the petitioner requested of Mr. George S. Ives, Chairman of the National Mediation Board whether an individual had access to an arbitration committee for settlement of a dispute related to the Agreement for Protection of Employees in Event of Merger of Pennsylvania and New York Central Railroads under provisions of Section 1 paragraph (e) of said agreement. The reply was, "The National Mediation Board does not have jurisdiction to interpret rights and obligations which may arise as a result of merger agreements, subject to approval by the Interstate Commerce Commission, or collective bargaining agreements negotiated between labor organization and carrier representatives." It is therefore doubtfull if I had access to such a committee that they could render the services required.

Point XIX

Appellant is aware that there are many points of protection that have not been included in this brief. A request is therefore made that any and all contributions presented herein contained in these grievances before the United States Court of Appeals of the Second Circuit including those presented to the lower court, the National Railroad Adjustment Board Third Division and the Carrier's Representatives be considered in the settling of these controversal issues.

A most important point must be included at this time for it is a fact that on the 9th of November, 1972, shortly after Award No. 19454 was received from the National Railroad Adjustment Board a letter was forwarded to Mr. E. A. Killeen, Executive Secretary. It included the question:

> "Will you be good enough to explain where or how the Petitioner did not show conclusively in the exhibits and submissions that the question relative to the Merger Protective Agreement (introduced by the Petitioner) and the February 7, 1965 Agreement (introduced by the Carrier) was not processed in the correct manner on the property and therefore before the Adjustment Board properly?
>
> Also, why if the Amtrak pass issue is a moot question, for this is what the grievance for unjust treatment was about, was it dismissed?".

Mr. Killeen's reply:

> "I have been directed by the Division to call your attention to Section 3, First (m) of the Railway Labor Act reading:
> 'The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute"'

and the Board can add nothing to the Award as written."

Suffice it to say this is only a portion of 153 First (m) as submitted to the claimant. I question the sufficiency of the answer and believe there have been precedents set to warrant the setting aside of the decision on this basis.

Copies of these letters are included with the Appendix and marked "L" and "M" respectively.

Point XX

In the contract given the Railroads by the National Railroad Passenger Corporation there is, I believe, a clause in Article 1 paragraph 2 page 2, according to a record I have before me.

> "The rates of pay,rules,working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of Railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

3"Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employe may have under any existing job security or other protective conditions or arrangements; provided, that there shall be no duplication or pyramiding of benefits to any employees, and, provided further, that the benefits under this Appendix. or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits."

8"FRINGE BENEFITS - No employee of railroad who is affected by a transaction shall be deprived during his protective period of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employes of Railroad, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained."

Truly the Adjustment Board's "Opinion of Board" must have been arrived at without any basis of fact. They have failed in their duty and have deprived the employe of rights that are

without doubt fully protected. Furthermore they have had such longevity of application that they should receive full protection under the "Grandfather clause".

The appellant realizes that because the National Railroad Passenger Corporation did not take over the equipment for the passenger business lock, stock and barrel, within reason that is, it may not be possible to give complete freedom of transportation to the railroad employe, as heretofore, to which he is entitled. However, there has to be an adjustment in the restrictive measures for Amtrak has not abided by the legislation for the protection of these employes. Those employed on the railroad prior to May 1, 1971. Many of these points have been introduced in submissions to the Adjustment Board, however, Amtrak has in their claim for reimbursement for employe travel from the railroads, as will be found in Finance Docket No. 27194 of the Interstate Commerce Commission, projected a 20% ridership of pass holders on any given train. Therefore in their restrictive measures for priority pass riders, those employed prior to May of 1971, there must be provision made for such contingencies on the various trains especially where and when there is only one train operating between two points.

With regard to Award No. 19454 of the National Rarilroad Adjustment Board Third Division appellant requests full restoration including one free trip per year plus emergencies as per regulations prior to May 20th of 1964 of the pass rights and 20.

privileges and fringe benefits of his employment. Employe's dependants who through tenure of service should be extended the courtesy of their own travel card as heretofore even into retirement for I am certain the lows of attrition will work in Amtrak's favor.

An attempt should be made to correct the changes that were apparently made in October of 1970 by Railroads in the recipricol privileges between domestic and foreign lines for this was no less than a blocking attempt to limit The National Railroad Passenger Corporations responsibilities of which some domestic lines were to be the common share holders.

In the event payment by the employe is mandatory beyond his home line, despite Amtrak's replacement of free travelers throughout the entire system with its own employes and others not ordinarily permitted by legislative Acts, said payment should be limited to no more than 25% of the present fares as evidenced by the National Railroad Passenger Corporation's current regulations.

Point XXI

Appropiate to the issues involved I submit;

Denial of due process - Cymny v. South Buffalo Ry.Co., Sup. 1970 308 NYS 2d 709, 62 Misc. 2d 320.

Point XXII

In the event this brief is not found acceptable in its present form and content permission is respectfully requested that this notice be entered as a motion that appellant be

extended the opportunity of corrections taking into consideration the fact that he is gainfully employed five days each week with only one days full access to official records.

Appellant prays for a favorable judgement.

Sincerely,

H. G. Skidmore

1st day of April 1974

H. G. Skidmore
Petitioner-Appellant
95-18 Baldwin Avenue
Forest Hills, New York
11375

Copy to:

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Robert M. Peet, Esq., General Attorney
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Hon. Jack B. Weinstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

H. G. Skidmore, Appellant

STATE of NEW YORK)
COUNTY of QUEENS)

S. S.

74 - 1122

AFFIDAVIT OF SERVICE BY MAIL

H. G. Skidmore, being duly sworn, deposes and says that he is over the age of twenty one years that he resides at 95-18 Baldwin Avenue, Forest Hills, New York, and that he is the appellant in the annexed action.

That on the 1st day of April, 1974 he, unless prevented thru an act of God, will serve the annexed Brief on the individuals named therein by depositing a true copy thereof contained in a securely sealed postage paid wrapper, properly addressed, in the letter drop regularly maintained and exclusively controlled by the United States Government at the Church Street Annex .

H. G. Skidmore

Sworn to before me this
1st day of April, 1974

George D. Ewing

GEORGE D. EWING
Notary Public, State of New York
No. 41-6213103 Queens County
Term Expires March 30, 1976